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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/745,285	12/21/2000	Rudolph W. Frey	24430.13	7415

7590

12/04/2002

Auzville Jackson, Jr.
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EXAMINER

SHAY, DAVID M

ART UNIT

PAPER NUMBER

3739

DATE MAILED: 12/04/2002

Please find below and/or attached an Office communication concerning this application or proceeding.



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EXAMINER

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DATE MAILED:

This is a communication from the examiner in charge of your application.
COMMISSIONER OF PATENTS AND TRADEMARKS

OFFICE ACTION SUMMARY

☒ Responsive to communication(s) filed on August 27, 2002

☒ This action is **FINAL**.

☐ Since this application is in condition for allowance except for formal matters, **prosecution as to the merits is closed** in accordance with the practice under *Ex parte Quayle*, 1935 D.C. 11; 453 O.G. 213.

A shortened statutory period for response to this action is set to expire 3 month(s), or thirty days, whichever is longer, from the mailing date of this communication. Failure to respond within the period for response will cause the application to become abandoned. (35 U.S.C. § 133). Extensions of time may be obtained under the provisions of 37 CFR 1.136(a).

Disposition of Claims

- ☒ Claim(s) 1-29 + 31-48 is/are pending in the application.
Of the above, claim(s) _____ is/are withdrawn from consideration.
☐ Claim(s) _____ is/are allowed.
☒ Claim(s) 1-29 + 31-48 is/are rejected.
☐ Claim(s) _____ is/are objected to.
☐ Claim(s) _____ are subject to restriction or election requirement.

Application Papers

- ☐ See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.
☐ The drawing(s) filed on _____ is/are objected to by the Examiner.
☐ The proposed drawing correction, filed on _____ is ☐ approved ☐ disapproved.
☐ The specification is objected to by the Examiner.
☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. § 119

- ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).
☐ All ☐ Some* ☐ None of the CERTIFIED copies of the priority documents have been
☐ received.
☐ received in Application No. (Series Code/Serial Number) _____
☐ received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

*Certified copies not received: _____

- ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e).

Attachment(s)

- ☐ Notice of Reference Cited, PTO-892
☐ Information Disclosure Statement(s), PTO-1449, Paper No(s). _____
☐ Interview Summary, PTO-413
☐ Notice of Draftsperson's Patent Drawing Review, PTO-948
☐ Notice of Informal Patent Application, PTO-152

--SEE OFFICE ACTION ON THE FOLLOWING PAGES--

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The rejections under 35 USC 112 are withdrawn in view of applicant's amendments. For the purposes of examination "spaced apart from" will be considered broader than "removed from".

The examiner requests a copy of pages 5-9 of the information disclosure statement, in order to indicate the foreign and literature documents that have been considered.

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claims 5, 6, 11, 14, 17, 18, 22-24, 28, 29, 34-36, 41-44, 47, and 48 are rejected under 35 U.S.C. 103(a) as being unpatentable over L'Esperance, Jr. ('913) in combination with Bille et al ('586). L'Esperance, Jr ('913) teach a method such as claimed except for the specifics of the relative shot placement. Bille et al ('586) teach a method such as claimed except for the time between adjacent shots. It would have been obvious to the artisan of ordinary skill to employ the shot pattern of Bille et al ('586) in the method of L'Esperance ('913) since this would minimize the peripheral affects of the laser beam on the tissue, as taught by Bille et al ('516), thus producing a method such as claimed.

Claims 1-29 and 31-48 are rejected under 35 U.S.C. 103(a) as being unpatentable over Warner et al in combination with Bille et al ('586). Warner et al teach forming a flap and ablating corneal tissue using a scanned spot. Bille et al ('586) provide the teachings enumerated above. It would have been obvious to the artisan of ordinary skill to combine these old and well known

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teachings for the reasons set forth above, thus producing a method such as claimed..

The terminal disclaimer filed August 27, 2002 is improper because it has not been signed by a person listed as having power of Attorney in the application. Thus the double patenting rejections set forth in the previous office action are not abrogated thereby and are hereby repeated, save for those directed to instant claim 30, now canceled. These rejections are also further applied to claims 15-18 and 45-48.

Applicant's arguments with respect to claims 1-29 and 31-48 have been considered but are moot in view of the new ground(s) of rejection.

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

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Any inquiry concerning this communication should be directed to David Shay at telephone number (703) 308--2215.



DAVID M. SHAY
PRIMARY EXAMINER
GROUP 330

David Shay:lf
November 26, 2002